IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

Durga Singh vs. State of Rajasthan & Ors.
(S.B.C.Writ Petition No.1664/04)

Dated:- 17th October, 2006.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr.Harish Purohit,Advocate,for the petitioners.
Mr.P.P.Choudhary, Advocate for the respondents.
Mr.Rameshwar Dave, Dy.Government Advocate for the State.

BY THE COURT:

In this writ petition the petitioner has challenged the appointment of respondent no. 3 Bharat Singh on the post of Physical Training Instructor Gr.III and has prayed that the order dated 29th March, 2004 issued by the District Education Officer-I, Secondary Education, Udaipur be quashed and set aside and the respondents be directed to consider the case of the petitioner for appointment on the consequential vacancy.

Learned counsel for the petitioner has submitted that respondent no. 3 Bharat Singh was appointed against reservation provided for physically handicapped whereas as per

serial no. 5 of Schedule II annexed with the Rajasthan Disabled persons Employment Rules, 2000(for short “the Rules of 2000)does not provide for any reservation to the disabled candidates on the post of Physical Training Instructor Gr.-III. According to the petitioner identification of a post on which the persons having disabilities of various kinds had been made with reference to the powers conferred by Section 32 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 . Since the post of Physical Training Instructor Gr.III has not been identified as one on which appointment of handicapped can be made, the benefit of reservation granted to the respondent no. 3 was illegal. Respondent no. 3 having secured only 70.72% marks in the merit which is lesser than the merit of the petitioner at 79.33%, was liable to be considered as a general category candidate and accordingly the petitioner should be held entitled to be appointed in his place.

Respondents have contested the writ petition by filing reply. In the reply, it was contended that appointment of the petitioner has been made against the quota of reservation meant for physically disabled candidates. It has therefore been contended that there can be no comparison of merit between the percentage of marks secured by general candidate and a disabled candidate even if he belongs to general category.

According to the respondents, the reservation has been lawfully provided for several candidates.

It may be noted that Schedule II of the Rules of 2000 on which heavy reliance has been placed by the petitioner has since been deleted by notification of the Government dated 10.10.2002. The State Government has by the same notification also simultaneously adopted the identification made by the Central Government. This has completely taken away the sole ground on which the writ petition was filed.

In view of this, very filing of the writ petition is mis-conceived. The writ petition is accordingly dismissed with no order as to costs.

(MOHAMMAD RAFIQ),J.